



IN REPLY REFER TO:
FWS-2019-00545

United States Department of the Interior

FISH AND WILDLIFE SERVICE

1011 E Tudor Road MS: IRTM
Anchorage, AK 99503



August 28, 2019

Mr. Brad Hennessy
Western Values Project
407C East 13th Street, Suite 568
Whitefish, Montana 59937

Dear Mr. Hennessy:

This is a partial response to your Freedom of Information Act (FOIA) request concerning the Arctic National Wildlife Refuge, dated September 28, 2018, in which your associate Mr. Chris Saeger requested the following:

*All officials in the office of the Alaska Regional Director, including [RD] Greg Siekaniec
Natural Resource Specialist Hollis Twitchell*

*Keywords: "Arctic National Wildlife Refuge", "ANWR". "Environmental Management
and Planning Solutions", "EMPSi", "Area 1002", "Section 1002", "ANWR-1002",
"AMWR 1002"*

Response

In response to your request we are providing you with records processed in response to two FOIA requests we are currently processing for the Defenders of Wildlife (DOW) as part of ongoing FOIA litigation. This response consists of one Adobe Acrobat Portable Document Format (PDF), totaling 546 pages and one Excel workbook consisting of approximately 150 pages. From the PDF, we have applied redactions to 42 pages and withheld three email attachments consisting of 118 pages, in full pursuant Exemption 5. These withholdings are noted within the pdf document and described below. The redacted and full release material is provided to you on the enclosed compact disc.

Exemptions

Exemption 5: Exemption 5 allows an agency to withhold "inter-agency or intra-agency memorandums or letters which would not be available by law to a party... in litigation with the agency." 5 U.S.C. § 552(b)(5). Exemption 5 therefore incorporates the privileges that protect materials from discovery in litigation, including the deliberative process, attorney work-product, attorney-client, and commercial information privileges. In accordance with the privileges

described below, we have redacted portions of 42 pages and withheld 118 pages because they qualify to be withheld under one or more of the following privileges.

Attorney-Client Privilege. The attorney-client privilege protects confidential communications between an attorney and his client relating to a legal matter for which the client has sought professional advice and is not limited to the context of litigation. Moreover, although it fundamentally applies to confidential facts divulged by a client to his/her attorney, this privilege also encompasses any opinions given by an attorney to his/her client based upon, and thus reflecting, those facts, as well as communications between attorneys that reflect confidential client-supplied information.

The information that has been withheld under the attorney-client privilege of Exemption 5 constitutes confidential communications between agency attorneys and agency clients, related to legal matters for which the client sought professional legal assistance and services. It also encompasses opinions given by attorneys to their clients based on client-supplied facts. Additionally, the FWS employees who communicated with the attorneys regarding this information were clients of the attorneys at the time the information was generated and the attorneys were acting in their capacities as lawyers at the time they communicated legal advice. Finally, the FWS has held this information confidential and has not waived the attorney-client privilege.

Deliberative Process Privilege. The deliberative process privilege protects the decision-making process of government agencies and encourages the frank exchange of ideas on legal or policy matters by ensuring agencies are not forced to operate in a fish bowl. A number of policy purposes have been attributed to the deliberative process privilege. Among the most important are to: (1) assure that subordinates will feel free to provide the decisionmaker with their uninhibited opinions and recommendations; (2) protect against premature disclosure of proposed policies; and (3) protect against confusing the issues and misleading the public. The deliberative process privilege protects materials that are both predecisional and deliberative. The privilege covers records that reflect the “give-and-take of the consultative process” and may include “recommendations, draft documents, proposals, suggestions, and other subjective documents which reflect the personal opinions of the writer rather than the policy of the agency.”

The materials that have been withheld under the deliberative process privilege of Exemption 5 are both predecisional and deliberative. They do not contain or represent formal or informal agency policies or decisions. They are the result of frank and open discussions among employees of the Department of the Interior. Their contents have been held confidential by all parties and public dissemination of this information would have a chilling effect on the agency’s deliberative processes; expose the agency’s decision-making process in such a way as to discourage candid discussion within the agency, and thereby undermine its ability to perform its mandated functions.” The deliberative process privilege does not apply to records created 25 years or more before the date on which the records were requested.

Government Commercial Information Privilege. The information withheld under this privilege consists of active conference call telephone numbers. This information could be used to conduct

conference calls by parties outside the government or used to call in to monitor internal government conversations. We are withholding it because disclosure to the public would chill communications between federal employees and harm the government's ability to exchange information. When the government enters the marketplace as an ordinary commercial buyer or seller, the government's information is protected under the commercial information privilege if it is sensitive information not otherwise available, and disclosure would significantly harm the government's monetary functions or commercial interests. The theory behind the privilege is that the government may be placed at a competitive disadvantage or the consummation of a contract may be endangered if confidential information generated by the government is disclosed.

Please note, some of the documents we are releasing (e.g. draft environmental assessments, or other documents outlining information needs, draft question and answer documents, and/or discussions among staff offering suggestions and/or discussing edits to documents and/or potential courses of action, etc.), technically meet the requirements to be withheld under the deliberative process privilege of FOIA Exemption 5 (5 U.S.C. §552(b)(5)). After consulting with our legal counsel, and carefully considering the parties involved, we believe there is no harm in releasing this information and no other exemptions apply, i.e. there are no institutional, commercial, and/or personal privacy interests at risk with the release of these documents. Therefore, we are exercising administrative discretion and releasing the documents to you in full. Please note, the Service does not waive its ability to invoke applicable FOIA exemptions for any arguably similar, but different information in future requests.

We reasonably foresee that disclosure would harm an interest protected by one or more of the nine exemptions to the FOIA's general rule of disclosure. This response to your request was prepared in consultation Attorney-Advisor Larry Mellinger.

Mediation Services

With respect to this response, you may seek dispute resolution services from our FOIA Public Liaison, Cathy Willis by phone at 720-425-5173; by email at cathy_willisa@fws.gov; or by mail at U.S. Fish and Wildlife Service; Attention: Cathy Willis, FOIA Public Liaison; 5275 Leesburg Pike, Falls Church, VA 22041.

Additionally, the 2007 FOIA amendments created the Office of Government Information Services (OGIS) to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation and does not affect the timing of filing an appeal with the Department's FOIA & Privacy Act Appeals Officer. You may contact OGIS in any of the following ways. You may contact OGIS in any of the following ways:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road – OGIS,

College Park, MD 20740-6001
E-mail: ogis@nara.gov,
Web: <https://ogis.archives.gov>
Telephone: 202-741-5770
Fax: 202-741-5769
Toll-free: 1-877-684-6448

Appeal Rights

You may also appeal this response to the Department's FOIA/Privacy Act Appeals Officer. If you choose to appeal, the FOIA/Privacy Act Appeals Officer must receive your FOIA appeal no later than 90 workdays from the date of this letter. Appeals arriving or delivered after 5 p.m. Eastern Time, Monday through Friday, will be deemed received on the next workday.

Your appeal must be made in writing. You may submit your appeal and accompanying materials to the FOIA/Privacy Act Appeals Officer by mail, courier service, fax, or email. All communications concerning your appeal should be clearly marked with the words: "FREEDOM OF INFORMATION APPEAL." You must include an explanation of why you believe the FWS's response is in error. You must also include with your appeal copies of all correspondence between you and FWS concerning your FOIA request, including your original FOIA request and FWS's response. Failure to include with your appeal all correspondence between you and FWS will result in the Department's rejection of your appeal, unless the FOIA/Privacy Act Appeals Officer determines (in the FOIA/Privacy Act Appeals Officer's sole discretion) that good cause exists to accept the defective appeal.

Please include your name and daytime telephone number (or the name and telephone number of an appropriate contact), email address and fax number (if available) in case the FOIA/Privacy Act Appeals Officer needs additional information or clarification of your appeal. You may contact FOIA/Privacy Act Appeals Officer in any of the following ways:

DOI FOIA/Privacy Act Appeals Office
Department of the Interior, Office of the Solicitor
1849 C Street, N.W., MS-6556 MIB
Washington, DC 20240
Telephone: 202-208-5339, Fax: 202-208-6677
Email: FOIA.Appeals@sol.doi.gov

Conclusion

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. § 552(c) (2006 & Supp. IV (2010)). This response is limited to those records that are subject to the requirements

of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

Fees associated with processing this request have been waived as described in our acknowledgment letter. Thank you for working with us. We will continue to provide you with rolling responses as they are produced. If you have any questions please contact me at 575-425-0033 or via email at fw7_foia@fws.gov

Sincerely,

Government Information Specialist (FOIA)
U.S. Fish and Wildlife Service

Enclosure (DVD)

cc: L. Bernhardt Attorney-Advisor, Office of the Solicitor
L. Mellinger, Attorney-Advisor, Office of the Solicitor
FWS FOIA Coordinator, Region 7, Alaska